



FSA Notice (Over-the-Counter Drugs)

IMPORTANT ANNOUNCEMENT

State's FSA to allow Reimbursement of Over-the-Counter Drugs

In consideration of Revenue Ruling 2003-102, and 2003-38 I.R.B. 559, the State's Salary Reduction Plan Document has been amended to permit reimbursement of over-the-counter drugs from Health Care Flexible Spending Accounts effective June 1, 2004.

Although the ruling was ostensibly written for drugs previously available only by prescription that have been approved for over-the-counter (OTC) purchase, the statutory language is broad enough to cover items like antacid and antiseptic. The government reached its new position by focusing on the absence of any express requirement in Code §105(b) that reimbursable expenses must also qualify as deductible expenses under Code §213. The Revenue Ruling does, however, emphasize that reimbursable OTC must be for medical care, not "merely beneficial" to general health. Only items purchased to treat an existing or imminent medical condition are covered. Items purchased to "have on hand" are not reimbursable.

Since it is the circumstance that determines whether multiple use items will be covered or not, additional documentation will be required to substantiate claims for over-the-counter purchases. The name of the drug must be imprinted on the receipt, not just noted. The participant must also indicate the medical condition on the receipt or separate statement as well as the name of the person for whom the drug is intended. Under some circumstances, a physician's statement may be needed in order to adjudicate the claim.

In addition to providing for OTC, the restated document clarifies the circumstances under which a change of election may be permitted and details the review and appeals process. The "Exceptions to the Irrevocability Rules" and the FAQs for Flexible Spending Accounts have also been revised and will be posted on the Benefits website along with the restated plan document.

Questions about qualifying OTC drugs and medicines may be directed to ASI, the State's FSA administrator, at (800) 659-3035 or asi@asiflex.com. Questions about any of the provisions in the plan document, including the exceptions to the irrevocability rules and the review and appeals process may be directed to Employee Benefits at 303-866- 3434 or benefits@state.co.us.

Over-the-Counter Drugs and Medicines

To be reimbursable the over-the-counter item must be:

- 1) For the treatment of an existing or imminent medical condition.
- 2) Accompanied by a store-printed, itemized receipt that includes the name of the item as well as the price.
- 3) The medical condition must be noted on the receipt or in a separate statement.
- 4) The name of the person for whom the item is intended must also be noted.
- 5) A reasonable quantity.
- 6) Purchased on or after June 1, 2004.

The following are not covered:

- 1) Items purchased to have on hand in anticipation of future need.
- 2) Items for general health (e.g., vitamins in the absence of a specific disorder)
- 3) Unreasonably large quantity. (e.g., more than is reasonably needed to treat the medical condition, or that can be used within the plan year.)

- 4) General hygiene items such as toothpaste, floss, deodorant, medicated powder, etc. This is true even if you have gum disease or rash from perspiration.
- 5) Vitamins, unless prescribed for a specific medical condition.
- 6) Special foods or nutritional formulas
- 7) Items purchased before June 1, 2004.

Plan administrators are required by law to adjudicate claims in accordance with the regulations. Procedures must be in place to discourage abuse and fraud. If it becomes too cumbersome or expensive to adjudicate over-the-counter claims, the plan document may have to be amended again to limit coverage. Please help preserve the benefit by using it appropriately and by actively discouraging abuse.

Appeals Process

Please note the review and appeals process in the restated plan document. It mirrors the general procedure and can be applied to all benefits, not just those falling under the Salary Reduction Plan.

- The first important point is to distinguish between appeals related to claims and appeals related to eligibility and process.
- Claims related to coverage (benefits) are appealed to the insurance carrier, or other claims adjudicator (e.g., ASI for flex).
- Other issues, including change requests, are handled at the local agency level.
- If a decision is unfavorable (e.g., request to add dependent denied as not timely), the claimant can request, in writing, a review by the Plan Administrator (Employee Benefits).
- The Plan Administrator will determine whether or not the initial determination conforms with policy.
- If the Plan Administrator's decision is also unfavorable, claimant may appeal in writing to the Director (Jeff Schutt).

The Director's decision is final.

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